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August 6, 2013

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St, SW
Washington, DC 20554

Re: MB Docket No. 09-182, *2010 Quadrennial Review*;
MB Docket No. 07-294, *Diversification of Ownership in the Broadcasting Services*

Dear Ms. Dortch:

The Office of Communication, Inc. of the United Church of Christ, Benton Foundation,[1] Common Cause, Communications Workers of America, Media Alliance, Media Council Hawai`i, National Organization for Women Foundation, and Prometheus Radio Project, by their attorneys, the Institute for Public Representation, along with National Hispanic Media Coalition (collectively "UCC et al."), file this letter as a reply to initial comments on the study submitted in these dockets by the Minority Media and Telecommunications Council

[1] The Benton Foundation is a nonprofit organization dedicated to promoting communication in the public interest. These reply comments reflect the institutional view of the Foundation, and unless obvious from the text, are not intended to reflect the views of individual Foundation officers, directors, or advisors.

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("MMTC") titled *The Impact of Cross Media Ownership on Minority/Women Owned Broadcast Stations* ("Study").[2]

The Public Notice issued by the Media Bureau on June 7 invited comment regarding "the extent to which the Study may or should be relied on by the Commission in the ongoing media ownership and diversity proceedings."[3] As we explained in our initial comments, the Commission may not and should not rely on the Study for at least three reasons: 1) because it fails to address the strongest argument advanced by UCC et al. and others why an increase in cross-ownership would harm ownership opportunities for minorities and women, 2) because it draws conclusions that are unsupported by the evidence collected, and 3) because it has a number of technical flaws.

Nothing in the initial comments argues persuasively that, notwithstanding these shortcomings, the Commission may or should rely on the Study.

Comments filed by four industry commenters attempt to make the case that the Commission may and should rely on the Study to repeal cross-ownership restrictions that have been in place for decades. But across the board, industry commenters—like BIA/Kelsey—grossly overstate the findings of the Study, mischaracterize the existing record in the above-referenced dockets, and—like BIA/Kelsey—completely ignore public interest advocates' strongest argument as to why increased cross-ownership would harm ownership opportunities for women and people of color.

[2] Mark R. Fratrik, *The Impact of Cross Media Ownership on Minority/Women Owned Broadcast Stations*, MB Docket Nos. 07-294, 09-182 (filed May 30, 2013) [hereinafter "Study"].
[3] Public Notice, Federal Communications Commission, Media Bureau, DA 13-1317, MB Docket Nos. 07-294, 09-182 (rel. June 7, 2013).

Industry Commenters, Like BIA/Kelsey, Grossly Overstate the Findings of the MMTC Study

In our initial comments on the Study, UCC et al. criticized the Study's overbroad conclusions regarding its results. We highlighted two important ways in which Study authors BIA/Kelsey had overstated the findings:

> BIA/Kelsey 1) misleadingly characterizes what it considers to be an *absence of evidence* (from a very small sample size) that cross-ownership harms ownership opportunities for minorities and women as *evidence that it does not* and 2) irresponsibly characterizes its examination of *one possible link* between cross-ownership and ownership opportunities for minorities and women as relevant to the question of whether *any such link* exists.[4]

We pointed out that

> The Study examines only a very limited question: whether or not minority or women owners of broadcast stations in markets with cross-media operations respond differently to a survey about perceived competition than non-minority and non-women owners in the same markets. But the Study's authors characterize it as focusing on a much broader question: "whether the existence of a commonly owned cross-media operation has a disparate impact on minority and/or women owned broadcast stations."[5]

Provided with the flawed conclusions published in the Study itself, industry commenters understandably make the same mistakes in their comments. Bonneville International Corporation and the Scranton Times, L.P. ("Bonneville/Scranton") incorrectly assert that the Study "indicates that newspaper/radio combinations impose no 'disparate impact' on minority or female licensees."[6] Morris Communications ("Morris") concludes, wrongly, that

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[4] UCC et al. Study Comments, MB Docket Nos. 07-294, 09-182 at 4 (filed July 22, 2013) [hereinafter UCC et al. Study Comments].
[5] *Id.* at 5.
[6] Bonneville International Corporation and the Scranton Times, L.P. Study Comments, MB Docket Nos. 07-294, 09-182 at 2 (filed July 22, 2013) [hereinafter Bonneville/Scranton Study Comments].

the Study "confirms that cross-ownership of broadcast stations and newspapers does not have a material adverse impact on minority or female broadcast ownership."[7]

And most absurdly—because it goes far beyond even the overstatements of the Study authors themselves—the Newspaper Association of America ("NAA") declares that "[the] findings are unambiguous: minority and female owners of broadcast stations do not believe that cross-ownership has *any* impact on their business."[8] This assertion must leave readers scratching their heads, wondering what its basis might be. Not one of the nine short questions (asked of only fourteen Study participants) mentioned cross-ownership, let alone was designed to ferret out whether or not participants "believe that cross-ownership has *any* impact on their business."[9] NAA's bold statement is thus not even tenuously supported by the Study, let alone "unambiguous."

Moreover, industry commenters completely ignore the fact that 21 percent of Study respondents *did* point to cross-owned properties as a problem in the competitive environment, leading MMTC itself to acknowledge "the possibility that a cross-media combination . . . *can have sufficient market power to operate as a material detriment to minority and women ownership.*"[10]

In moving forward with its analysis of the record, UCC et al. urge the Commission to be wary of overbroad conclusions regarding the Study—such as those above and those made by BIA/Kelsey itself in the published Study—that are not supported by the results themselves.

Industry Commenters Mischaracterize the Existing Record in These Dockets and, Like BIA/Kelsey, Overlook the Strongest Argument Why an Increase in

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[7] Morris Communications Company, LLC Study Comments, MB Docket Nos. 07-294, 09-182 at 6 (filed July 22, 2013) [hereinafter Morris Study Comments].
[8] Newspaper Association of America Study Comments, MB Docket Nos. 07-294, 09-182 at 1 (filed July 22, 2013) [hereinafter NAA Study Comments].
[9] *See* Study at 13 (listing the 9 questions asked of Study participants).
[10] Letter from David Honig to Chairwoman Clyburn et al, MB Docket Nos. 07-294, 09-182 at 2 (filed May 30, 2013) (emphasis added).

Cross-Ownership Would Harm Ownership Opportunities for Minorities and Women

As UCC et al. explained in our initial comments on the Study, a major shortcoming of this Study is that it

> looks at whether perceived competition is different for minority and/or women owned broadcast stations vis-à-vis similarly situated non-minority/non-women owned broadcast stations in markets with cross-ownership.[11]

But

> those who oppose relaxing cross-ownership restrictions have not focused on the argument that similarly-situated women/minorities and non-women/non-minorities are treated differently. We have instead focused on the fact that women/minorities *are not similarly-situated*. Women/minorities who own broadcast stations tend to be less likely to own multiple stations and/or to own major network affiliates than their non-women, non-minority counterparts, in part because of historic and present-day discrimination. This crucial difference accounts for why these owners would be negatively affected by any relaxation of cross-ownership restrictions.[12]

In their enthusiasm to hail the MMTC Study as conclusive evidence that cross-ownership does not negatively impact opportunities for women and people of color, industry commenters are quick to pretend that public interest advocates never made the above arguments. For example, Bonneville/Scranton predicts dramatically that the Commission "will hunt [the record] in vain for empirical support to bolster retention of the now 38-year-old newspaper/radio cross-ownership ban,"[13] asserting that "those who raise minority/female ownership concerns . . . have themselves never submitted hard data buttressing their contentions."[14] Morris says that "pro-regulatory parties have themselves

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[11] UCC et al. Study Comments at 2.
[12] *Id.* at 3.
[13] Bonneville/Scranton Study Comments at 3.
[14] *Id.* at 4.

never offered a shred of actual evidence that maintenance of the [NBCO] rule is necessary to further *any* public interest goal."[15] And the National Association of Broadcasters states that "the MMTC Study is entirely consistent with the record in this proceeding, which contains no evidence showing that modifications to the broadcast ownership rules to permit more efficient combinations, including newspaper/broadcast and radio/television cross-ownership, would harm competition, diversity, or localism."[16]

But merely asserting that the record neither identifies nor supports any reason that increased cross-ownership could be bad, does not make it so. Contrary to what industry commenters would like the Commission to believe, the record in these dockets is rich with repetitions of the argument detailed above as to why relaxing cross-ownership restrictions would harm minority/woman ownership, along with evidence. For several related excerpts from filings in this docket, see Appendix A attached to this letter.[17]

UCC et al. and other public interest advocates have demonstrated in these dockets that increased consolidation—including cross-ownership—harms ownership opportunities for women and people of color. Neither industry commenters' denial of the record, nor the MMTC Study with its overbroad conclusions, negates this fact.

The Commission Is Still Obligated to Perform Its Own Analysis of Ownership Data to Determine the Impact of Any Rule Changes on Ownership Opportunities for Women and People of Color *Before* It May Make Any Such Changes

As we and other commenters have explained time and time again in these dockets, the Commission will run afoul of court orders if it relaxes any

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[15] Morris Study Comments at 6.
[16] National Association of Broadcasters Study Comments, MB Docket Nos. 07-294, 09-182 at 6 (filed July 22, 2013).
[17] Appendix A: Excerpts from Public Interest Advocates' Filings Detailing Why Increased Cross-Ownership Would Harm Ownership Opportunities for Women and People of Color, *infra* at A-1.

ownership rules without first performing a thorough analysis of how such rule change(s) would affect ownership opportunities for women and people of color.[18]

NAA clearly wishes that this were not the case. In its initial comments it claims, incredibly, that "the opponents have provided absolutely no legal or policy justification for why such large-scale research would be necessary."[19] But of course public interest advocates *have* provided such justification, over and over. The primary reason that such an analysis must be performed is because the law requires it.

Conclusion

The Study performed by BIA/Kelsey and submitted in these dockets by MMTC is fundamentally flawed for a number of reasons. Most notably, it fails completely to address the most likely reasons that cross-ownerships harm ownership opportunities for women and people of color.

Although several industry commenters have attempted to make the case that the Commission may and should rely on the Study in the ongoing media ownership and diversity proceedings, not one addresses the Study's critical shortcomings. Therefore, for the reasons UCC et al. outlined in our initial comments on the Study, the Commission may not and should not rely on the Study.

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[18] *See, e.g.*, UCC et al. Comments, MB Docket Nos. 07-294, 09-182 at 29–38 (filed Mar. 5, 2012); Comments of National Hispanic Media Coalition, Center for Rural Strategies, and Center for Media Justice, MB Docket Nos. 07-294, 09-182 at 22–33 (filed Mar. 5, 2012); Free Press Comments, MB Docket Nos. 07-294, 09-182 at 8–23 (filed Mar. 5, 2012); UCC et al. Data Comments, MB Docket Nos. 07-294, 09-182 at 4–16 (filed Dec. 26, 2012).
[19] NAA Study Comments at 4.

Instead, if the Commission wishes to make any changes to the standing broadcast ownership rules, it should focus its energy on moving forward with the court-mandated empirical analysis of how such rule changes would affect ownership opportunities for women and people of color.

Sincerely,

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August 6, 2013

Encl: Appendix A: Excerpts from Public Interest Advocates' Filings Detailing Why Increased Cross-Ownership Would Harm Ownership Opportunities for Women and People of Color

Appendix A: Excerpts from Public Interest Advocates' Filings Detailing Why Increased Cross-Ownership Would Harm Ownership Opportunities for Women and People of Color

UCC et al. Reply Comments (April 2012)

We found that the percentage of stations owned by each racial or ethnic group is vastly lower than each group's percentage of the population as a whole. We also found little correlation between the location of minority-owned stations and geographic areas with large minority populations. We further found that the vast majority of minority-owned stations are not affiliated with any of the four major networks (ABC, CBS, NBC, and Fox). As a result, these stations are particularly vulnerable to acquisition under the FCC's current local television ownership rule as well as under the proposed NBCO rule.[20]

Free Press Reply Comments (April 2012)

In *Off the Dial*, Free Press compiled the first *complete* assessment and analysis of female and minority ownership of full-power commercial broadcast radio stations operating in the United States. . . . The data reviewed by Free Press suggested that the level of consolidation in radio markets was closely correlated with the level of diverse ownership in those markets and that both female- and minority-owned stations thrive in markets that are less concentrated. These data also revealed that:

- Markets with female and minority owners have fewer stations per owner on average than markets without them.
- The level of market concentration is significantly lower in markets with female and minority owners. This holds true if the size of the market and the level of minority population in the market are held constant.
- The probability that a particular station will be female or minority owned is *significantly lower* in more concentrated markets.

[20] UCC et al. Reply Comments, MB Docket Nos. 07-294, 09-182 at 20–21 (filed Apr. 17, 2012).

- The probability that a particular market will contain a female- or minority-owned station is *significantly lower* in more concentrated markets.[21]

. . . .

. . . In *Devil in the Details*, Free Press addressed the numerous problems presented by the proposed [relaxation of the NBCO] rule . . . but also highlighted how this particular approach to relaxing the cross-ownership rule would disproportionately target minority owners' stations for purchase. . . .

Because stations ranked outside of the top four are generally smaller stations, it is unlikely that they would be in a position to acquire a major local daily newspaper. It is far more likely that the large and well-established owners of local daily newspapers will seek to acquire TV stations. The vast majority of cross-owned combinations in existence today are the product of large and conglomerated news paper [sic] chain owners, such as Tribune or Media General, purchasing a local broadcast station.

By and large, people of color do not own major daily newspapers in the top 20 markets. However, nearly half of the television stations owned by people of color are in the top 20 markets, and none of these are among the top four stations in those markets. This means that if the FCC relaxes its NBCO rules as currently proposed, stations owned by minorities would be disproportionately targeted for acquisition by newspaper owners seeking to purchase a station.[22]

National Association of Black Owned Broadcasters Data Comments (December 2012)

Minority radio station owners generally tend to own one or two radio stations. When, in 1996, large companies were allowed to own up to eight radio stations in the largest markets, minority owners found themselves in a very difficult position. Large radio group owners could approach advertisers with a

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[21] Free Press Reply Comments, MB Docket Nos. 07-294, 09-182 at 49–50 (filed Apr. 17, 2012).
[22] *Id*. at 53–54.

single sales force offering up to eight different radio formats, including perhaps a format specifically targeting minority audiences, and purport to deliver all of the desired demographics for that advertiser. A minority owner, programming only to the minority audience, could find advertisers declining to advertise on the minority owned station, based upon the purported ability of the group owner to deliver the minority audience as part of a group buy, at a discounted price.

If these same large radio group owners are now allowed to combine their multiple station ownership advantage with ownership of a daily newspaper, the group owner will be able to combine the radio and newspaper sales forces, and will be able to offer advertisers a combined radio-newspaper buy, which will leave minority owners even more disadvantaged in their efforts to compete in the marketplace.[23]

Free Press Data Comments (December 2012):

As markets become more concentrated, artificial economies of scale are created. This drives away potential new entrants in favor of existing large chains. Concentration also has the effect of diminishing the ability of existing smaller station groups and single-station owners to compete for both advertising and programming contracts. These effects combine to create immense pressure for smaller owners to sell their stations. And this destructive cycle disproportionately impacts women and minority owners, as they are far more likely to own just a single station in comparison to their white-male and corporate counterparts. Current female and minority owners are driven out of markets; and discrimination in access to deals, capital and equity, combined with the higher barriers to entry created by consolidation, shut out new female and minority owners.

In fact, this practical impact of Commission rules allowing greater local market consolidation was described in 2007 by several minority-owners who have subsequently lost stations or exited the market completely.

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[23] NABOB Data Comments, MB Docket Nos. 07-294, 09-182 at 11 (filed Dec. 26, 2012).

The evidence is overwhelming: if the Commission allows more local media market consolidation it will crowd out and raise entry barriers for small businesses, which are far more likely to be firms owned by women and people of color.[24]

UCC et. al Data Reply Comments (January 2013)

[E]ven if minority-owned full power television stations are not the subjects of cross-ownership acquisition under the Commission's proposal, competition from media giants in an increasingly consolidated marketplace will nevertheless present a rising threat to the viability of those stations. As NABOB details in their comments, broadcasters owned by African Americans often control only one or two stations, which means it is harder for them to compete against large conglomerates.[25]

[24] Free Press Data Comments, MB Docket Nos. 07-294, 09-182 at 21–22 (filed Dec. 21, 2012).
[25] UCC et al. Data Reply Comments, MB Docket Nos. 07-294, 09-182 at 12–13 (filed Jan. 4, 2013).